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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re NANCY N. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

LEONARDO M. et al.,

Defendants and Appellants.

D053013

(Super. Ct. No. SJ11807)

APPEALS from findings and orders of the Superior Court of San Diego County, Elva Soper, Judge. (Retired Judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Leonardo M. and Angelica N. appeal findings and orders of the juvenile court made at a six-month status review hearing under Welfare and Institutions Code¹ section 366.21, subdivision (e). We affirm.

¹ Further statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

Leonardo M. and Angelica N. are the separated parents of daughters Nancy N., born August 1997, and S.M., born November 1999 (together children). In January 2007 Angelica observed her boyfriend, Armando L., kneeling on the floor by Nancy's bed. His head was under the bedcovers in the area of Nancy's abdomen and buttocks. Nancy's pajama pants and underwear were pulled down to mid-thigh. Angelica telephoned Leonardo for help. He immediately contacted the police and Armando was arrested.

During an interview at Children's Hospital, Nancy provided a history of sexual abuse by Armando. S.M. denied she had been abused. In February 2007 Angelica recanted her allegations against Armando in criminal court, and he was released from jail.

In March and April 2007 the San Diego County Health and Human Services Agency (Agency) offered voluntary services to Angelica and the children. The social worker learned Angelica and the children were visiting Armando. Nancy's behavior was becoming rebellious. Nancy said they spent the night at Armando's home and S.M. reported Angelica planned to marry Armando. Angelica and the children visited him every week and spent the night at his house. The social worker directed Angelica not to allow any contact between the children and Armando and gave her a list of therapists.

The social worker tried to contact Leonardo to assess his ability to protect his children. Leonardo twice refused to speak with her.

In April 2007 the Agency initiated dependency proceedings. (§ 300, subds. (d), (j).) After the children were detained, Leonardo met with the social worker and explained he was not certain what happened. The doctor who examined Nancy said there

was no physical evidence of abuse. Angelica told Leonardo that she lied and did not see Armando do anything to Nancy.

At the jurisdiction and disposition hearings, the court sustained the petitions and removed the children from Angelica's custody. Leonardo initially requested placement but acknowledged in court that his current circumstances did not permit him to assume custody of the children. The court denied Leonardo's placement request and ordered the Agency to provide services to the family.

The Agency's case plan required Angelica to participate in therapy, a parenting education program and a psychological assessment. Leonardo was directed to participate in individual therapy to learn to recognize signs of abuse and to protect the children. The children were to receive therapeutic services.

In its initial six-month review report dated December 13, 2007, the Agency reported the parents attended services as arranged. Leonardo's visits with the children were unsupervised without any reported problems or complaints. Angelica was diagnosed with an adjustment disorder with mixed anxiety and depression, a nonspecified personality disorder and borderline intellectual functioning. The psychologist recommended long-term therapy to enable Angelica to resolve past issues and to adequately protect the children. Angelica's visits with the children were supervised. On several occasions, Angelica's questions and demeanor adversely affected the children's emotional well-being.

In February 2008, shortly before the children were to start a 60-day trial visit with Leonardo, Nancy's behavior deteriorated. During a visit with Leonardo, Nancy locked

herself in a closet because she did not like the food Leonardo's girlfriend prepared. The following week, Nancy became upset when Leonardo would not let her drink a small container of flavored cream. Later that day, Nancy wanted to walk to meet her foster parent. Leonardo said it was too far to walk and told her to get into the car; Nancy refused. In an attempt to get her to comply, Leonardo pulled her arm and then held her tightly when she started crying. A neighbor called the police. A police officer told Nancy that if she did not quiet down, he would call an ambulance and they would give her a shot with a big needle. Nancy was released to the foster mother.

Nancy told the social worker that previously Angelica hit her with a big spoon, and Leonardo hit her with his belt. Nancy said she was afraid of Leonardo and did not want to visit him. S.M. said she was "okay" visiting Leonardo. In March 2008 the court imposed supervision requirements on Leonardo's visitation with the children.

On April 14, 22 and 23, 2008, the six-month review hearing was held. The Agency recommended the children remain in foster care and the parents continue to participate in offered services and supervised visitation.

The children testified outside their parents' presence. S.M. said it made her happy to visit her parents. Nancy reported that she enjoyed visiting her parents and would like to visit them more often. She wanted to return home "next year." However, if S.M. was living with her parents, Nancy would want to live with them too.

The foster mother testified she had been the children's caregiver since May 2007, and monitored the children's visits with Angelica. Angelica was loving with the children,

but Nancy seemed angry after visits; Nancy was also stubborn. The children became rebellious after visiting Angelica.

The social worker testified she received the case on September 25, 2007. During the past three months, Nancy had emotional and behavioral problems. She refused to shower, had toileting problems and lost her temper over "very little things." Nancy had some developmental delays and received school-based assistance. S.M. was doing well. She was a happy, talkative and sentimental child, and appeared quite close to her sister.

The social worker observed four visits by Leonardo with the children that went reasonably well. Leonardo was participating in therapy. At the therapist's suggestion, the Agency added a parenting class to his case plan.

The social worker believed the children would suffer detriment if returned to parental custody. Nancy told the social worker she wanted to return home "one day" but did not believe her parents were ready to care for her. They did not make her feel important or loved. Both children said the parents had physically mistreated them. Leonardo needed to improve his parenting skills. He made Nancy angry and escalated situations to full-blown crises he was unable to manage. Angelica needed to improve her parenting skills and learn how to safeguard the children's emotional well-being.

Angelica testified she did not have a relationship with Armando and did not know his whereabouts. She acknowledged Nancy had learning disabilities and behavior problems.

The court ordered Nancy to undergo a psychological evaluation. The court stated it did not understand why Nancy's many problems had not been addressed earlier. Nancy

was not ready for unsupervised visits with her parents. S.M. was too closely bonded with Nancy to currently benefit from unsupervised visitation. The court ordered supervised visitation services but authorized the Agency to permit the children to have unsupervised visits, overnights and a 60-day home visit with Leonardo.

The court found reasonable efforts were made to allow the children to safely return home (reasonable efforts finding), reasonable services were offered or provided to the parents (reasonable services finding) and return to either parent would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the children (detriment finding).

DISCUSSION

A

Reasonable Efforts and Services

Leonardo contends the evidence is insufficient to support the reasonable efforts finding and the reasonable services finding. He argues the Agency did not adequately assess Nancy's needs or obtain timely information from her therapist, delayed therapeutic services to him and the children, and did not offer a reasonable plan to help him deal with Nancy's temper. Angelica joins in his argument.

The Agency argues the challenged findings are supported by substantial evidence. It asserts it provided appropriate referrals and case management services for the children, and they were able to begin individual therapy during the reunification period. It also contends the social worker evaluated Leonardo for placement throughout the

reunification period and provided visitation services to help him cultivate his relationship with the children.

Minors' appellate counsel does not take any position on appeal.

At each status review hearing, the court must determine "[t]he extent of the agency's compliance with the case plan in making reasonable efforts . . . to return the child to a safe home" (§ 366, subd. (a)(1)(B).) The court must also determine whether reasonable services were offered or provided to the parent. (§ 366.21, subd. (e); Cal. Rules of Court, rule 5.710(e).)

The Agency must make a good faith effort to develop and implement a reunification plan tailored to meet the family's needs. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810.) The adequacy of reunification services and the Agency's efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) The standard is not whether the services provided were the best that might be provided in an ideal world but whether the services were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

In reviewing the reasonableness of the services provided, we indulge in all legitimate and reasonable inferences to uphold the ruling. A finding will be upheld if supported by substantial evidence. (*In re Misako R., supra*, 2 Cal.App.4th at p. 545.)

The record shows the Agency made reasonable efforts to avoid removal of the children from parental custody. In March 2007 the Agency offered voluntary services to the family. Angelica refused services. In April Angelica telephoned the social worker

and reported that Nancy's behavior was becoming rebellious. The social worker gave Angelica a list of therapists. Angelica sought therapy for herself but not for the children.

After the children were detained, the Agency designed a case plan the parents accepted without complaint. Initially, the social worker had difficulty locating Spanish-language evaluators to assess the parents' needs for therapy. The Agency referred the parents to group therapy. Angelica participated in parenting classes and a psychological evaluation. The services were in place or scheduled by the time of the disposition hearing.

Leonardo's group therapist agreed to provide ongoing individual therapy to him. The social worker sent payment authorization on July 3, 2007. It took the Agency about six weeks to complete the authorization. The record shows the social worker diligently monitored the process, corrected errors and contacted her supervisor, colleagues and the therapist's office for assistance. Leonardo had an initial session on August 3. He started therapy on September 20, approximately three months after the disposition hearing.

Although a three-month delay in services is significant, Leonardo was able to participate in ongoing therapy for approximately six months before the initial status review hearing. The record shows the Agency continued to monitor the case and provide support services. For example, the social worker contacted the therapist with concerns about Leonardo's recent difficulties managing Nancy's behavior and modified his case plan to include the therapist's recommendation of a parenting class.

As Leonardo observes, the court raised concerns about the Agency's response to Nancy's needs. The record shows the social worker met with the children every month

from June 2007 to March 2008. At some point in time not clear from the record, the children started participating in therapy. In October 2007 the foster mother reported the children continued to attend weekly individual therapy, which appeared to help them. In December the foster mother informed the social worker that she discussed Nancy's behavior with the therapist and was instructed to monitor her behavior to determine whether an evaluation was needed. In addition to psychological services, the Agency provided medical care and treatment to address the children's enuresis, which improved with medication. At some point in time, again not clear from the record, the children's therapist left to start her own business. The children's therapy resumed in January 2008. We infer the social worker made the necessary arrangements to continue the children's therapy.

In March 2008, approximately one month before the six-month review hearing, the social worker learned Nancy refused to get out of the car to attend therapy, and the foster mother did not believe Nancy was making progress. The social worker addressed the issue with Nancy, who said she did not like her therapist. The social worker counseled Nancy to continue therapy.

Although the court expressed dissatisfaction with Nancy's treatment plan, it also determined the Agency made reasonable efforts to offer or provide reasonable services to reunify the family. Although the services provided were not perfect, the record shows the social worker made a good faith effort to identify the problems that led to the loss of custody and the family's current needs, immediately offered the family services designed to remedy those problems, met with the parents and children every month, provided case

planning and crisis management services, and made reasonable efforts to assist the family when problems arose. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) We conclude substantial evidence supports the findings the Agency made reasonable efforts to return the children to a safe home and provided reasonable services to the parents. (§§ 366, subd. (a)(1)(B), 366.21, subd. (e).)

B

Detriment Finding

Leonardo challenges the detriment finding as to S.M. He argues S.M. was happy and healthy, enjoyed unsupervised visitation and wanted to return home. Leonardo asserts the court's stated reason for its detriment finding--S.M.'s strong sibling bond with Nancy--does not rise to the level of detriment necessary to deprive him of custody of his daughter. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789 [the standard "must be construed as a fairly high one"].) Leonardo implicitly concedes substantial evidence supports the detriment finding as to Nancy.

The Agency acknowledges the court referred to S.M.'s strong bond with Nancy when it made its ruling but asserts that it was not the sole basis for the detriment finding. The Agency contends S.M. recently asserted she did not want to return to either parent because they formerly hit her, and there were signs she was having emotional problems.

At the six-month status review hearing, the court shall order the child's return to parental custody unless the court finds, by a preponderance of the evidence, that return home would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (e).) In making its determination, the

court must consider the social worker's report and recommendations, the parent's efforts and/or progress and the extent of the parent's participation in services. (*Ibid.*)

We review a detriment finding for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) A judgment will be upheld if it is supported by substantial evidence, even though substantial evidence to the contrary also exists and the trial court might have reached a different result. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 230.)

The record does not support Leonardo's argument that the court based the detriment finding solely on S.M.'s close bond with Nancy. Rather, the court made its comments about the close sibling relationship in the context of visitation.² With respect to the detriment finding, the court's primary concern was that Leonardo did not tell his therapist about the problems that arose during visitation.

Leonardo acknowledged he did not disclose this information because he feared it would make him "look bad" and impede his efforts to reunify with his children. In April 2008 the therapist suggested Leonardo complete 12 weeks of parenting classes and additional therapy. The Agency recommended the children remain in foster care until Leonardo improved his parenting skills and ability to support them emotionally. The

² The court stated, "It's unfortunate that the younger daughter was so closely bonded [to Nancy] in some ways, because I think she could have been given unsupervised visits with the father earlier if she wasn't tied so much to Nancy, and I'm not sure Nancy is going to be ready as early to do it. Maybe something can be worked out in that regard as we go along, but not at this point."

court could reasonably conclude Leonardo's progress with his case plan was not yet sufficient to permit S.M. to safely return home. (§ 366.21, subd. (e).)

Further, the court did not err to the extent it considered the sibling relationship while determining whether S.M. would suffer detriment if returned home. This court previously stated: "Sibling relationships are clearly a relevant consideration in evaluating a child's emotional well-being. Thus, under the statutory scheme governing postremoval placement decisions, a detriment finding can properly be supported by the emotional harm arising from the loss of sibling relationships even in the absence of the noncustodial parent's contribution to the detriment." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425.)

Here, S.M. was close to Nancy. The social worker testified that separating the children would upset S.M. The court was entitled to consider the effect separation from Nancy would have on S.M.'s emotional well-being. (*In re Luke M., supra*, 107 Cal.App.4th at p. 1425.) Although we recognize the focus of the court's concerns was Leonardo's inability to effectively parent Nancy, and the court might have reached a different result had it believed other evidence, we conclude substantial evidence supports the detriment finding. (*In re Dakota H., supra*, 132 Cal.App.4th at p. 230.)

C

Visitation

Leonardo maintains the court abused its discretion by not granting his request for unsupervised visitation with Nancy. He contends that Nancy's two temper tantrums do not demonstrate she was at risk in his care. Angelica joins in his argument. She further

asserts the court abused its discretion when it denied her request for unsupervised visitation with the children after she completed all case plan requirements.

Visitation must be as frequent as possible, consistent with the well-being of the child. (§ 362.1, subd. (a)(1)(A).) No visitation order shall jeopardize the safety of the child. (§ 362.1, subd. (a)(1)(B).) In balancing the interests of the parent and the best interests of the child, the court has wide discretion in determining the terms and conditions of visitation. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 953; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.)

We review visitation orders under the deferential abuse of discretion standard. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 48-49.)

The social worker testified Leonardo needed assistance in managing Nancy's behaviors to keep them from escalating to "full-blown" crises. The court's visitation orders directed the Agency to increase visitation to implement unsupervised visitation between Leonardo and the children as quickly as possible. Because Nancy's behaviors were traumatic for her parents and her sister, the court wanted to make certain Nancy received assistance before the visits became unsupervised. We cannot conclude the court abused its discretion when it determined the best interests of the children required additional temporary supervision and support services during visitation. (§ 362.1, subd. (a)(1)(A).)

With respect to Angelica's visitation, the social worker did not believe Angelica fully appreciated the impact on Nancy of the sexual molest and of Angelica's recanted allegations. Throughout the proceedings, the social worker documented concerns about

Angelica's interactions with the children during unsupervised visitation and its adverse impact on the children's emotional well-being. The court did not abuse its discretion when it denied Angelica's request for unsupervised visitation.

DISPOSITION

The findings and orders are affirmed.

McDONALD, J.

WE CONCUR:

BENKE, Acting P. J.

IRION, J.